

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 05/22/08**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Walla Walla District, Boise Field Office, NWW-2008-195-B03**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** Delineate wetlands on an 80-acre parcel of land for a proposed subdivision, located east of Middleton in Canyon County, Idaho .

State: Idaho

County/parish/borough: County

City: Middleton

Center coordinates of site (lat/long in degree decimal format): ° Lat. ° Long.

Universal Transverse Mercator: Zone 11 Northing 4840180 **N**, Easting 535207 **E**.

Name of nearest waterbody: Middleton Mill Canal, Newman Lateral, and US Ditches

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Boise River

Name of watershed or Hydrologic Unit Code (HUC): 14050114

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination. Date: 05/22/08

☒ Field Determination. Date(s): 04/01/08

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Pick List** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

☐ TNWs, including territorial seas

☐ Wetlands adjacent to TNWs

☒ Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

☐ Non-RPWs that flow directly or indirectly into TNWs

☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

☐ Impoundments of jurisdictional waters

☒ Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: linear feet: width (ft) and/or 3 acres.

Wetlands: 20.6 acres.

**c. Limits (boundaries) of jurisdiction based on: **Not established at this time.****

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: .

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

#### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: .

#### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: 1290square miles

Drainage area: 0 square miles

Average annual rainfall: 12.11 inches

Average annual snowfall: 21.40 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

☐ Tributary flows directly into TNW.

☒ Tributary flows through 3 tributaries before entering TNW.

Project waters are Pick List river miles from TNW.

Project waters are Pick List river miles from RPW.

Project waters are 2-5 aerial (straight) miles from TNW.

Project waters are Pick List aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW<sup>5</sup>: Middleton Mill Canal flows into the Middleton Mill Ditch, which flows into the Canyon Hill Canal, which flows into the A-Drain and/or Lateral 500, which flows into the Boise River, at River Mile 24. The

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Newman Lateral flows into the Middleton Mill Canal, which flows into the Middleton Mill Ditch, which flows into the Canyon Hill Canal, which flows into Lateral 500/A-Drain, which flows into the Boise River. US Ditches with exception of W-8 flow into the Middleton Mill Canal, which flows into the Middleton Mill Ditch, which flows into the Canyon Hill Canal, which flows into Lateral 500/A-Drain, which flows into the Boise River. The Boise River from the upper tail waters of Arrow Rock Reservoir (River Mile 87.5 Slide Gulch Bridge) downstream to the confluence of with the Snake River is a navigable in fact water. Public boat ramps exist on Arrow Rock Reservoir (River Mile 76 to River Mile 87.5) that allow the general boating public water access to the reservoir for power boating and sail boating. Not less than four public boat ramps exist on Luck Peak Reservoir (River Mile 63.6 to River Mile 76) which is the lowest impoundment on the Boise River System. The Corps of Engineers leases the Spring Shore Marina to the Idaho Department of Parks and Recreation. This full service marina provides seasonal boat mooring for instate and out of state users for a fee. the Boise River below the Lucky Peak Dam is floated by general public to its confluence with the the Snake River. The Ada County Parks and Recreation Department operates a tube and raft facility about seven miles upstream of the City of Boise. They rent rafts and tubes to the general public and provide shuttle service back to the Barber Park facility. The raft and tube rental, and shuttle service is funded by public user fees. A commercial boat touring service also operates on the Boise River, at River Mile 51.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

**Tributary** is: ☐ Natural

☒ Artificial (man-made). Explain: Middleton Mill Canal, Newman Lateral and irrigation field ditches constructed for agricultural purposes.

☒ Manipulated (man-altered). Explain: Construction of the Middle Mill Canal began in 1864 and was completed in 1889. To construct the canal, many natural sloughs/drainages were straightened and/or realigned. Middleton Mill Canal point of diversion is on the north bank of the Boise River in Township 4 North, Range 1 West, Section 13, Boise Meridian. It runs in a generally westerly course through the community of Middleton and five miles beyond for a total distance of twenty-seven miles.

**Tributary** properties with respect to top of bank (estimate):

Average width: 15 feet

Average depth: 8 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

☒ Silts

☐ Cobbles

☐ Bedrock

☐ Other. Explain: .

☒ Sands

☒ Gravel

☐ Vegetation. Type/% cover:

☐ Concrete

☒ Muck

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Controlled Irrigation Facility.

Presence of run/riffle/pool complexes. Explain: None. Irrigation facility.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: Perennial Flow. Middleton Mill Canal receives water from natural drainages, diverted irrigation water from the Boise River, and the Boise River shallow gravel aquifer.

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: Trapezoidal-shaped Irrigation Facility.

Subsurface flow: **Yes**. Explain findings: Unconfined, Boise River shallow gravel aquifer. The Boise River shallow gravel aquifer is a, shallow aquifer created by flood and furrow irrigation practices.

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks

☐ OHWM<sup>6</sup> (check all indicators that apply):

☒ clear, natural line impressed on the bank

☐ changes in the character of soil

☐ shelving

☒ the presence of litter and debris

☐ destruction of terrestrial vegetation

☒ the presence of wrack line

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting                           |
| <input checked="" type="checkbox"/> leaf litter disturbed or washed away    | <input type="checkbox"/> scour                                      |
| <input checked="" type="checkbox"/> sediment deposition                     | <input type="checkbox"/> multiple observed or predicted flow events |
| <input checked="" type="checkbox"/> water staining                          | <input type="checkbox"/> abrupt change in plant community           |
| <input type="checkbox"/> other (list):                                      |   |
- ☐ Discontinuous OHWM.<sup>7</sup> Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Middleton Mill Canal contributes sediment, bacteria, nutrients, and temperature to the Lower Boise River---a 303(d)-listed waterway.

Identify specific pollutants, if known: Nutrients, Temperature, Sediment & Bacteria.

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<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☒ Wetland fringe. Characteristics: palustrine emergent wetland community.
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 19.9 acres

Wetland type. Explain: Palustrine Emergent Wetlands.

Wetland quality. Explain: Low.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: Receives diverted water from the Boise River, natural drainages, and the Boise River shallow gravel aquifer.

Surface flow is: **Discrete and confined**

Characteristics: Irrigation District controls the release of water immediately downstream of the parcel of land with a series of drop-board irrigation control structures. During the irrigation season (April 15-October 15), these irrigation control structures are in place to store irrigation water. Thus, a large portion of this parcel of land is inundated with water during the growing season, annually.

Subsurface flow: **Yes**. Explain findings: The Boise River shallow gravel aquifer is prevalent hydrologic feature in the communities of Star and Middleton, Idaho. This aquifer was created as the result of irrigation practices. Starting as early as the 1860's, farmers in the lower Boise valley started diverting water from the Boise River for irrigation purposes. As the extent of the irrigated area increased, large amounts of water were applied to the surface of land by flood and/or furrow irrigation methods and ground water levels rose throughout a large part of the valley by tens of feet. High ground water levels began to interfere with soil and crop health. In response, numerous drains were constructed and existing ephemeral drainage ways were deepened and widened in the early 1900's to drain excess ground water. Ground water levels have been relatively stable in the lower Boise valley since the many drains were constructed back in the early 1900's.

On April 1, 2008, prior to the irrigation season, a field review of the parcel of land by the Corps of Engineers and Environmental Protection Agency personnel found an extremely high ground water table (less than 18 inches from the surface) within the identified wetlands. The topography of the parcel of land slopes towards the Middleton Mill Canal, which supports a subsurface connection to the Boise River shallow gravel aquifer.

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☒ Directly abutting
- ☒ Not directly abutting
  - ☒ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Middleton Mill Canal contributes pollutants to the Lower Boise River---303(d)-listed waterway.

Identify specific pollutants, if known: Sediment, Bacteria, Temperature, and Nutrients.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☒ Riparian buffer. Characteristics (type, average width): Palustrine Emergent Wetland, about .05 miles.

- ☒ Vegetation type/percent cover. Explain:Palustrine Emergent.
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

**3. Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **15-20**

Approximately ( 80 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Yes (W-1)	0.2	Yes (W-5)	2.3
Yes (W-2)	0.6	Yes (W-6)	1.9
Yes (W-3)	7.6	Yes (W-7)	3.1
Yes (W-4)	3.2	Yes (W-10)	1.0

\*Refer to attached Wetlands Location Map (Figure 2), for site locations.

Summarize overall biological, chemical and physical functions being performed: The primary function of the above-listed palustrine emergent wetlands is to filter pollutants (sediment, bacteria, nutrients) from agricultural fields and pasture lands in the immediate area, prior to entering into the open channel of the Middleton Mill Canal. Palustrine emergent wetlands are typically found throughout irrigation facilities in Southern Idaho. Middleton Mill Canal and other irrigation facilities near the community of Middleton are documented point sources of pollution to the Lower Boise River. Migratory song birds were observed nesting in wetlands alongside of the Middleton Mill Canal, thus providing a secondary benefit. However, the wetlands are considered a monocultured wetlands and are of low value to wildlife and fisheries. No fisheries exist in the Middleton Mill Canal, Newman Lateral and the US Ditches..

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The primary function of all contiguous emergent wetlands of the Middleton Mill Canal and US Ditches is to filter pollutants (sediment, bacteria, nutrients) from agricultural fields and/or pasture lands in the immediate area, prior to entering into the open channel of the Middleton Mill Canal. The Middleton Mill Canal and other irrigation facilities near the community of Middleton are documented point sources of pollution to the Lower Boise River. Migratory song birds were observed nesting in wetlands alongside of the Middleton Mill Canal, thus providing a secondary benefit. However, the wetlands are considered a monocultured wetlands and are of low value to wildlife. The Middleton Mill Canal does not support a resident fish population. W-8, W-9, W-11 and W-12 are considered wetlands adjacent to an RPW, but that do not directly abut the RPW. It also is believed that W-8, W-9, W-11 and W-12 function albeit in smaller scale to that of wetlands abutting the Middleton Mill Canal and identified US Ditches. W8, W-9, W-11 and W-12 are connected by way of a subsurface connection to the Middleton Mill Canal by way of the Boise River shallow gravel aquifer, or by the ground water table of the Middleton Mill Canal itself. There is also reasonable

confidence that these wetlands periodically receive surface waters from the Middleton Mill Canal and/or the US Ditches, during the irrigation season.

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

**1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.  
☐ Wetlands adjacent to TNWs: acres.

**2. RPWs that flow directly or indirectly into TNWs.**

- ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Middleton Mill Canal begins on the north bank of the Boise River in Township 4 North, Range 1 West, Section 13, Boise Meridian. The Middleton Mill Canal receives water by way of a irrigation diversion on the north bank of the Boise River in Township 4 North, Range 1 West, Section 13, Boise Meridian. The Middleton Mill Canal also receives water by way of natural drainages and sloughs that were modified during the construction of the Canal, and the Boise River shallow gravel aquifer. Construction of the Middleton Mill Canal began in 1864 and was completed in 1889. The Middleton Mill Canal runs a generally westerly course through the community of Middleton, about 27 miles. The Middleton Mill Canal flows into the Canyon Hill Canal, which flows into the A Drain and/or Lateral 500, which flows into the Boise River, at River Mile 24. The Boise River from the upper tail waters of Arrow Rock Reservoir (River Mile 87.5 Slide Gulch Bridge) downstream to the confluence of with the Snake River is a navigable in fact water. Public boat ramps exist on Arrow Rock Reservoir (River Mile 76 to River Mile 87.5) that allow the general boating public water access to the reservoir for power boating and sail boating. Not less than four public boat ramps exist on Lucky Peak Reservoir (River Mile 63.6 to River Mile 76) which is the lowest impoundment on the Boise River System. The Corps of Engineers leases the Spring Shore Marina to the Idaho Department of Parks and Recreation. This full service marina provides seasonal boat mooring for instate and out of state users for a fee. The Boise River below the Lucky Peak Dam is floated by general public to its confluence with the the Snake River. The Ada County Parks and Recreation Department operates a tube and raft facility about seven miles upstream of the City of Boise. They rent rafts and tubes to the general public and provide shuttle service back to the Barber Park facility. The raft and tube rental, and shuttle service is funded by public user fees. A commercial boat touring service also operates on the Boise River, at River Mile 51 .
- ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Newman Lateral is an irrigation facility that receives water during the irrigation season between April 15 and October 15, annually. The Newman Lateral receives irrigation water from the Middleton Canal, which receives water from the Boise River at the point of diversion within Township 4 North, Range 1 West, Section 13, Boise Meridian. The Newman Lateral flows into the Middleton Mill Canal, which flows into the Canyon Hill Canal, which flows into the A-Drain and/or Lateral 500, which flows into the Boise River, at River Mile 24. The Boise River from the upper tail waters of Arrow Rock Reservoir (River Mile 87.5 Slide Gulch Bridge) downstream to the confluence of with the Snake River is a navigable in fact water. Public boat ramps exist on Arrow Rock Reservoir (River Mile 76 to River Mile 87.5) that allow the general boating public water access to the reservoir for power boating and sail boating. Not less than four public boat ramps exist on Lucky Peak Reservoir (River Mile 63.6 to River Mile 76) which is the lowest impoundment on the Boise River System. The Corps of Engineers leases the Spring Shore Marina to the Idaho Department of Parks and Recreation. This full service marina provides seasonal boat mooring for instate and out of state users for a fee. the Boise River below the Lucky Peak Dam is floated by general public to its confluence with the the Snake River. The Ada County Parks and Recreation Department operates a tube and raft facility about seven miles upstream of the City of Boise. They rent rafts and tubes to the general public and provide shuttle service back to the Barber Park facility. The raft and tube rental, and shuttle service is funded by public user fees. A commercial boat touring service also operates on the Boise River, at River Mile 51. US Ditch (W-6) on said parcel of land flows directly into the Middleton Mill Canal, which flows into the Canyon Hill Canal, which flows into the A Drain and/or Lateral 500, which flows into the Boise River at River Mile 24. US Ditch (W-1) on said parcel of land receives water from the Middleton Mill Canal, which eventually flows back into the Middleton Mill Canal, which flows into Canyon Hill Canal, which flows into the A Drain and/or Lateral 500, which flows into the Boise River, at River Mile 24. US ditches (W-10, W-2 and W-8) on said parcel of land receive water from the Newman Lateral by way of a CMP culvert accross Foothill Road, and through a series of unnamed irrigation ditches, which flow into the Middleton Mill Canal, which flows into the Canyon Hill Canal, which flows into the A Drain and/or Lateral 500, which flows into the Boise River, at River Mile 24 .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).  
☒ Other non-wetland waters: 3 acres.

Identify type(s) of waters: **irrigation facilities( irrigation ditches, lateral, and canal).**

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

<sup>8</sup>See Footnote # 3.



- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).  
☐ Other non-wetland waters: acres.  
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Wetland W-3 is a contiguous wetland associated with a trapzoidal-shaped canal--- Middleton Mill Canal. Wetland W-3 hydric soil indicators is loamy gleyed mineral soils (NRCS Soil F-6 for Wetland W-3). Wetland W-3 exhibited a homogenous vegetation community dominated primarily by reed canarygrass smartweed, and yellow iris. Wetland W-4 is a wetland associated with a high ground water table; overflow from the Middleton Mill Canal; and US Ditches. Wetland W-4 is interconnect to Wetland W-5, with no physical barriers and/or upland breaks. Wetland W-4 hydric soil characteristics are mucky histic and sandy gleyed matrix soils (NRCS Soil Type: A-3 and S-4 for Wetland W-4). Wetland W-4 dominant vegetation included: Nebraska sedge, reed canarygrass, spike rush, baltic rush, sedges and cattails. Wetlands W-5 and W-6 are supported by backwaters of the Middleton Mill Canal, a high groundwater hydrology and a collection of runoff water diverted from the Middleton Mill Canal. Wetland W-5 and W-6 hydric soil indicators is a loamy mucky mineral soil (NRCS Soil Type: F1 for Wetland W-5 and Wetland 6). Wetlands W-5 and W-6 exhibited a homogenous vegetation community dominated by cattails, reed canary grass and yellow iris. Wetland W-7 is associated with a high groundwater table and overflow from the Middleton Canal. Wetland W-7 is interconnected to Wetland W-6, with no physical barriers and/or upland breaks. A high groundwater table and soils saturated to the surface were present. Wetland W-7 hydric soil characteristics redoximorphic features in sandy and loamy soils (NRCS Soil Type: S-5 and F-7 for W-7). Wetland W-7 dominant vegetation included: Nebraska sedge, reed canary grass, spike rush, baltic rush, bentgrass, and cattails..**
- ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: . Wetland W-1 is a contiguous wetland associated with a trapzoidal-shaped US ditch (8 foot wide by 1 foot deep), which receives water from the Middleton Canal. This US ditch discharges water back into the Middleton Mill Canal. Wetland W-1 hydric soil indicators is a mucky hemic soil with redoximorphic features (NRCS Soil Type: A-9 for Wetland W-1). Wetland W-1 has a homogenous vegetation community dominated primarily by reed canarygrass, smartweed, and yellow iris. W-2 is a contiguous wetland associated with a trapzoidal-shaped US ditch (3 foot wide by 1-foot deep), which receives water from the Newman Lateral. Water from this US ditch eventually discharges into the Middleton Mill Canal by way of Wetland W-4. Wetland W-2 hydric soil indicator is a mucky hemic and fibric soil (NRCS Soil Type: A-9 for Wetland W-2). Wetland W-10 is contiguous to a trapzoidal US ditch (3 foot wide by 1 foot deep) that receives water from the Newman Lateral, which eventually discharges into the Middleton Mill Canal. Wetland W-10 hydric soil characteristics in these sites included: redoximorphic features in loamy mucky mineral soil (NRCS Soil Type: F-1 for Wetland W-10). Wetland W-10 consists of a homogenous vegetation community dominated primarily of reed canary grass and yellow iris.

Provide acreage estimates for jurisdictional wetlands in the review area: **19.9** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area:          acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area:          acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ Interstate isolated waters. Explain: Wetlands W-8, W-9, W-11 and W-12 are connected to the Middleton Mill Canal via way of a subsurface connection of the Boise River shallow gravel aquifer; a direct subsurface connection to the Middleton Mill Canal and/or a subsurface connection either by the Boise River shallow gravel aquifer and/or the to the Middleton Canal by way of a US Ditch . There is reasonable confidence that these wetlands are periodically inundated by the Middleton Mill Canal and/or US Ditches, during the irrigation season. However, these wetlands are separated by slivers of uplands from the Middleton Mill Canal and/or US Ditches.
- ☐ Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** W-8 and W-11 are separated by uplands from a jurisdictional US ditch of less than 5 linear feet. W-9 and W-12 of are separated by uplands of less than 70 linear feet from a jurisdictional US Ditch. Wetlands W-8 and W-9 sites are wet meadows that are associated with a high groundwater table and probably overflow from the Middlton Canal and/or US Ditches. High groundwater table and soils saturated to the surface was present W-9. Hydric soil characteristics in these sites were redoximorphic features in loamy mineral soil (NRCS Soil Type: F-3 and F-6 for Wetlands W-8 and W-9). Dominant vegetation in these communities included Nebraska sedge, reed canary grass, spike rush, baltic rush, bentgrass, sedges, pasture grasses, and cattails W-11 and W-12 sites are depressional wetlands that collect irrigation runoff as well as, being influenced by a subsurface connection to the Boise River shallow gravel aquifer and/or possibly the Middleton Mill Canal. The dominate hydric soil indicator at these sites is a loamy mucky mineral soil (NRCS Soil Type: F1 for Wetlands W-11 and 12). W-11 and W-12 exhibit a homogenous vegetation community dominated primarily by cattails with reed canarygrass and yellow iris.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters:          linear feet          width (ft).
- ☐ Other non-wetland waters:          acres.
- Identify type(s) of waters: .
- ☒ Wetlands: 0.7 acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
- ☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):          linear feet          width (ft).
- ☐ Lakes/ponds:          acres.
- ☐ Other non-wetland waters:          acres. List type of aquatic resource: .
- ☐ Wetlands:          acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):          linear feet,          width (ft).
- ☐ Lakes/ponds:          acres.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- ☐ Other non-wetland waters:          acres. List type of aquatic resource:          .
- ☐ Wetlands:          acres.

#### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: The Wetlands Group, LLC.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☒ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:          .
- ☐ Corps navigable waters' study:          .
- ☐ U.S. Geological Survey Hydrologic Atlas:          .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000: Middleton(43116, F-5) and Caldwell(43116, F-6).
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:          .
- ☐ National wetlands inventory map(s). Cite name:          .
- ☐ State/Local wetland inventory map(s):          .
- ☐ FEMA/FIRM maps:          .
- ☐ 100-year Floodplain Elevation is:          (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):          .
  - or ☐ Other (Name & Date):          .
- ☐ Previous determination(s). File no. and date of response letter:          .
- ☒ Applicable/supporting case law: US Supreme Court's Opinion Rapanos v. United States and Carabell v. United States .
- ☐ Applicable/supporting scientific literature:          .
- ☒ Other information (please specify): April 1, 2008, Onsite Field Visit to Site: Eric M. Gerke of USCOE and John Olson of EPA.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Idaho Department of Environmental Quality Report Entitled: Lower Boise River Nutrient Subbasin Assessment, December 2001; Idaho State Historical Society Report: Middleton Mill Ditch Company Canal, Number 505, 1974..